**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE JURISDICTION**

**APPEAL FROM ORDER NO. 814 of 2005**

Shri Khan Mohd Moin Nazir .. Appellant

vs

Mumbai Munici. Corpn .. Respondents

Mr.Rajendra Yadav for Appellant

Ms.Geeta Joglekar for BMC

..

**CORAM : B.H.MARLAPALLE, J**

**DATE: 19th September, 2005**

**P.C.**

1. Heard learned counsel for the appellant-plaintiff. By the impugned order dated 26th July, 2005 the learned Judge of the trial Court was pleased to reject the prayer for ad interim relief and Notice of Motion No. 2735 of 2005 filed in L.C.Suit No.3009 of 2005 was made returnable on 12th August, 2005. Learned counsel

states that the said Notice of Motion is coming up today before the trial court and that the respondent-Corporation has not filed the reply.

2. Reliance has been placed on the G.R. dated 11th July, 2001 issued by the Government of Maharashtra regarding rehabilitation of the slum dwellers. In the Notice of Motion the plaintiff has prayed for stay to the notice of demolition. There is no prayer made for an alternative accommodation. On the face of the said pleadings the plaintiff cannot rely upon the G.R. dated 11th July, 2001 for seeking protection and in any case the Notice of Motion is pending before the trial Court.

3. In the premises, this appeal need not be entertained and the plaintiff may approach the trial Court for amendment of the Notice of Motion. In case he seeks to rely upon the State Government's G.R. dated 11th July, 2001 and prays for an alternative accommodation it would be considered by the trial Court on its own merits. Appeal is dismissed in limine.

(B.H.Marlapalle, J)